

**STATE BOARD OF EQUALIZATION**

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July 11, 1996

Mr. J--- L---
U--- M--- S---, Inc.
XXXXX M--- P---, Suite XXX
--- ---, CA XXXXX

Re: Sales Tax Status for P---A---™ Carrier

Dear Mr. LaRosa:

This is in reply to your May 8, 1996 letter in which you ask for the application of sales tax to charges by U--- M--- for U--- P---A---™ Carriers (carrier). You send an illustration of a carrier and provided the following facts:

“U--- M--- S---, Inc. produces (through an outside manufacturer) the P---A---™ carriers which consist of a cup carrier and an integrated food tray. U--- M--- G---, Inc. is a separate California corporation that acts as U--- M---’s sole authorized sales agency in the United States. U--- M---’s representatives will contact potential advertisers and their respective advertising agencies to offer available advertising space on the P---A---™ carriers. The advertiser or its agency purchases exposure on the carriers by venue and total attendance.

“For instance, A--- purchases one season’s attendance at Dodger Stadium. The advertiser provides us with production ready separated film which we transmit to our producer. The finished carriers are delivered to the stadium. The concessionaire receives the carriers free of charge. The concessionaire gives them to fans who purchase multiple food items. Once the season is complete, U--- M--- removes the first advertiser’s carriers from the stadium in favor of the next advertiser’s campaign for the next season. By contract, U--- M--- maintains title to those units not given to the fans. Neither the advertiser nor the concessionaire has the right to use or dispose of the remaining units in any manner not authorized by our company.”

We assume that you purchase the carriers for resale from the manufacturer and that you contract to place only one advertiser's advertisement on each carrier as you suggest in the hypothetical describing a sale to A---.

Revenue and Taxation Code section 6051 imposes sales tax on retailers' retail sales of tangible personal property in this state unless the sale is a sale for resale or is specifically exempt from tax by statute. The measure of tax is the retailer's gross receipts from the retail sales.

Revenue and Taxation Code section 6006 defines "sale" at subdivision (a) to mean and include any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration.

Sales tax does not apply to a charge for media advertising. For example, if U--- M--- were to produce carriers on its own behalf and merely sell advertising space to a number of clients, we believe U--- M--- would be the consumer of, and tax would apply to the sale to U--- M--- of the carriers. Tax would not apply to U--- M---'s charge for the advertising space. However, we believe that, when U--- M--- produces carriers for only one specific advertiser and delivers the carriers to the advertiser or to another person, such as the concessionaire, on behalf of the advertiser, U--- M---'s transaction is a retail sale of the carriers to the advertiser.

Revenue and Taxation Code section 6379.5 provides for an exemption from sales tax for the sale of certain printed materials consisting of printed sales messages:

"There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and mailed or delivered by the seller, the seller's agent, or a mailing house, acting as the agent for the purchaser, through the United States Postal Service or by common carrier to any other person at no cost to that person who becomes the owner thereof."

The exemption is limited by its terms to the sale of "catalogs, letters, circulars, brochures, and pamphlets." The food and drink carriers are not within the type of printed material listed; therefore, we believe U--- M---'s sales of the carriers would not qualify for the exemption.

In summary, we believe sales tax applies to U--- M---'s retail sales of the carriers to the advertisers. We are unable to locate a record of a seller's permit issued in the name of U--- M--- S---, Inc. If you have not done so, you should contact your local State Board of Equalization office and obtain a seller's permit.

Mr. J--- L---

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We hope this answers you questions; if not, or if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:cl

Enclosure (Reg. 1541.5)

cc: --- --- District Administrator